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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

KIMBERLY M.,

Petitioner,

v.

THE SUPERIOR COURT OF KERN COUNTY,

Respondent;

KERN COUNTY DEPARTMENT OF HUMAN
SERVICES,

Real Party in Interest.

F078237

(Super. Ct. No. JD138539-00)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Raymonda B. Marquez, Judge.

David Duket for Petitioner.

No appearance for Respondent.

Mark L. Nations, County Counsel, and Judith M. Denny, Deputy County Counsel,
for Real Party in Interest.

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* Before Peña, Acting P.J., Smith, J. and DeSantos, J.

In October 2018, the juvenile court denied Kimberly M. (mother) reunification services as to her then 31-month-old son Maximiliano under Welfare and Institutions Code section 361.5, subdivision (b)(5)¹ and set a section 366.26 hearing for January 29, 2019. Subdivision (b)(5) of section 361.5 allows the juvenile court to deny services to a parent whose conduct resulted in the severe physical abuse of his or her child. Mother contends there was insufficient evidence Maximiliano suffered severe physical abuse and seeks reversal of the court's orders by extraordinary writ. (Cal. Rules of Court, rule 8.450 & 8.452.) We deny the writ petition.

PROCEDURAL AND FACTUAL BACKGROUND

On April 15, 2018, Kern County Police Officers Joshua Pena and Spencer Carlson responded to a call at mother's residence that she and then two-year-old Maximiliano (the baby) were being beaten by her boyfriend, Carlos, who goes by his middle name, Omar. Mother told Pena the assault began the day before at approximately 5:00 a.m., when the baby, who was sleeping in bed with her and Omar, began to cry. Omar grabbed the baby by the arm, raised him in the air, and hit him in the mouth, telling him to "shut up." When the baby cried louder, Omar spanked him on the bottom and punched him in the face, head, and body several times. She said Omar punched the baby with the force one would use on an adult. She yelled at Omar to stop and pulled the baby toward her. Omar kicked the baby on the back and threw him on the bed. Omar tried to reach for the baby again, but mother slapped him and told him to leave the baby alone. Omar slapped her in the face about six times and left the residence. He returned around 10:00 p.m.

Meanwhile, mother did not report the incident to the authorities or seek medical attention. The next morning around 8:00 a.m., while on her way to the bathroom, mother saw the baby face down on the floor. She confronted Omar, who was awake and lying on the bed. Omar walked toward the baby and hit him in the face. When mother said she

¹ Statutory references are to the Welfare and Institutions Code.

was going to call her sister, Omar picked the baby up, placed him outside of the bedroom, and partially closed the door. He hit mother twice on both arms with a leather belt, causing visible injuries, and left the bedroom. Mother picked the baby up and texted her sister who contacted the police.

Mother witnessed Omar spank the baby on the bottom three other times during the month but did not report it, claiming she was afraid of Omar. She denied any prior incidents of domestic violence with Omar and declined an emergency protective order. She admitted using methamphetamine while caring for the baby, but Pena determined she was not under the influence at that time. He arrested her for child endangerment.

Carlson took digital photographs of the baby's injuries, which he numbered and described as a "golf ball size hematoma on top left side of head," "[b]ruising and swelling on both left and right eyebrow/forehead," "[b]ruising, redness and swelling on left eye," "[b]ruising on right side of face, 2 straight lines," "[d]ime size bruise on left bicep and left forearm," "[t]wo dime size bruises on right bicep," "[a]pproximate 2-inch diameter bruise on upper right thigh," "[c]ut on inside of bottom lip," "[s]mall bruise on left and right hip" and "[b]ruise/redness just below belly button." Carlson also noted the baby appeared happy and unbothered by his injuries.

The baby was treated at the hospital where doctors ruled out internal bleeding and fractures. He was diagnosed with a contusion and scalp hematoma, which his treating physician did not consider life-threatening, and released. A maternal aunt told Pena at the hospital that she took care of the baby in the past and noticed bruising on his body. When she asked mother about the bruises, mother claimed the baby fell and bruised himself.

The baby was discharged to a caretaker who was instructed to follow up with a physician in one or two days and provided patient education materials about pediatric head injuries. The literature explained that a contusion signifies bleeding in the brain that

can cause swelling and a hematoma is bleeding in the brain that gathers and forms a clot and a bump.

The following day, the caretaker told a social worker from the Kern County Department of Human Services (department) the baby had a “handprint across his face on the right” and a “black eye on his left side, as well as a bruise on the left side of his face.” She gave him a bath when they got home from the hospital and noticed he had “a lot of bruises” all over his body. A doctor who examined the baby two days later stated he appeared to be doing well and would heal within three weeks. The doctor did not have any concerns about the baby’s health.

Mother stated she and Omar had been living together for approximately two months and Omar had spanked the baby before to make him stop crying. He also threw a glass at the baby, hitting him in the head. She didn’t leave Omar because she had nowhere to go.

The department filed an original dependency petition on the baby’s behalf, alleging he came within the juvenile court’s jurisdiction under section 300, subdivisions (b) (failure to protect), (e) (severe physical abuse) and (i) (cruelty). The petition alleged one count under subdivision (e) that mother allowed Omar to spank the baby when the baby cried and did nothing to intervene or to seek assistance. The single count detailed Omar’s actions on April 14 and 15, 2018, as relayed by mother to the police and the baby’s injuries as described by Carlson in his report. The petition listed the whereabouts of the baby’s alleged father as unknown. It was later determined that he was deceased.

Mother’s attorney challenged the application of subdivision (e) at the jurisdictional hearing, arguing there was insufficient evidence to find the baby suffered severe physical abuse as defined in the statute. The juvenile court, however, sustained the dependency petition in its entirety, finding there was clear and convincing evidence the baby suffered swelling and deep bruising. The court cited mother’s statement Omar punched the baby as if hitting an adult and the resultant injuries: the golf-ball sized hematoma on the right

side of the baby's head, the handprint across the right side of his face, his black eye, the bruise on the left side of his face and the bruising all over his body.

At the dispositional hearing in October 2018, the juvenile court found clear and convincing evidence the baby suffered severe physical abuse as a result of mother's conduct under section 300, subdivision (e) and denied her reunification services under section 361.5, subdivision (b)(5). The court did not comment on the nature of the baby's injuries, indicating it had done so at the jurisdictional hearing. The court considered whether reunification services were likely to be successful and determined that they would not be in light of the department's inability to confirm whether mother separated from Omar and Omar's repeated physical abuse of the baby. The court also determined reunification services would not be in the baby's best interest.

DISCUSSION

Section 361.5, subdivision (b)(5) authorizes the juvenile court to deny reunification services to the parent of a child who the court brought within its jurisdiction under subdivision (e) of section 300 because of the conduct of that parent. A child is subject to the court's jurisdiction under subdivision (e) if the "child is under the age of five years and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child." "Severe physical abuse" includes, as pertinent here, "more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness." (§ 300, subd. (e).)

Thus, to deny a parent reunification services under section 361.5, subdivision (b)(5), the juvenile court must first establish jurisdiction over the child under section 300, subdivision (e) based on factual allegations that establish by a preponderance of the evidence the child was severely physically abused. The court must then find that the facts establishing the section 300, subdivision (e) abuse finding were clearly and convincingly proven. (*K.F. v. Superior Court* (2014) 224 Cal.App.4th 1369, 1388.)

Here, the juvenile court adjudged the baby a dependent child of the court pursuant to section 300, subdivisions (b), (e) and (i). In denying mother services under section 361.5, subdivision (b)(5), the court affirmatively stated it found the section 300, subdivision (e) abuse finding by clear and convincing evidence.

Mother concedes the baby suffered physical abuse on April 14 and 15, 2018, but not severe physical abuse; namely “bleeding, deep bruising, significant external or internal swelling, bone fracture or unconsciousness” either day or on both days as required by the statute. She points out that he did not sustain fractures or lose consciousness. As to the bruising, she argues there is no medical evidence establishing it as “deep bruising.” Nor is there medical evidence the swelling on his head and around his eye was “significant.”

On a challenge to the sufficiency of the evidence to support the juvenile court’s findings and disposition, we determine whether substantial evidence, contradicted or uncontradicted, supports them. In so doing, we review the record in the light most favorable to the court’s determinations and draw all reasonable inferences from the evidence to support them. We do not reweigh the evidence or exercise independent judgment. (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

As a preliminary matter, petitioner fails to show, and we are unaware of any authority that requires medical evidence to support a finding of severe physical abuse based on deep bruising and/or significant swelling. In any event, such evidence exists on this record. According to the medical report, the baby sustained head injuries, i.e., a contusion and a hematoma, which were explained in the literature as bleeding in the brain, swelling and blood clotting. The head injuries were the result of Omar punching the baby in the head and face with significant force. On that evidence, it is not difficult to infer the baby sustained the kind of bruising and swelling intended by the statute.

Further, while the medical report does not pinpoint when these injuries occurred, one could infer the baby suffered a series of similar assaults over the two days. Mother

stated the assaults began the morning of April 14 when Omar punched the baby multiple times in the face and head. The following morning, after she found the baby face down on the floor, Omar hit the baby in the face. Given the force with which Omar hit the baby and the kinds of injuries he sustained, the juvenile court could reasonably conclude the baby suffered deep bruising and/or significant swelling with each assault.

We deny the writ petition, concluding substantial evidence supports the juvenile court's finding the baby suffered severe physical harm under section 361.5, subdivision (b)(5). We do not review the juvenile court's findings as to whether reunification services would prevent reabuse or serve the baby's best interests since mother does not challenge them.

DISPOSITION

The petition for extraordinary writ is denied. This court's opinion is final forthwith as to this court pursuant to rule 8.490(b)(2)(A) of the California Rules of Court.